

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAMGEN POWER SYSTEMS, LLC, a
Washington limited liability company,

Plaintiff,

v.

AGILIS ENGINEERING, INC., a Florida
corporation,

Defendant.

NO. 2:12-cv-01762-MJP

**PLAINTIFF RAMGEN POWER
SYSTEMS, LLC'S REPLY IN
SUPPORT OF MOTION FOR
DETERMINATION OF
ATTORNEY'S FEES AND COSTS**

**NOTE ON MOTION CALENDAR:
Friday, December 5, 2014**

TABLE OF CONTENTS

PAGE

I. ARGUMENT 1

II. CONCLUSION 4

TABLE OF AUTHORITIES

PAGE

CASES

<i>Coble v. Suntrust Mortgage, Inc.</i> , No. C13-1878 JCC, 2014 WL 4436926 (W.D. Wash. Sept. 9, 2014).....	2
<i>McPherson v. Homeward Residential</i> , No. C12-5920 BHS, 2014 WL 442378 (W.D. Wash. Feb. 4, 2014).....	2
<i>Phillips v. Newspaper Holdings, Inc.</i> , No. C11-559 RSM, 2011 WL 4829410 (W.D. Wash. Oct. 12, 2011)	3

RULES

FED. R. CIV. P. 6(b)(1)(B).....	1, 2, 3
FED. R. CIV. P. 62(a).....	3
Local Civil Rule 7(b)(2)	1
Local Civil Rule 7(j).....	2

I. ARGUMENT

Plaintiff Ramgen Power Systems, LLC (“Ramgen”) respectfully submits this Reply in support of Ramgen’s Motion for Determination of Attorney’s Fees and Costs [Dkt. No. 132] (the “Fee Determination Motion”). Defendant Agilis Engineering, Inc. (“Agilis”) has not filed an opposition to the Fee Determination Motion. Pursuant to Local Civil Rule 7(b)(2), Agilis’s failure to file an opposition to the Fee Determination Motion “may be considered by the court as an admission that the motion has merit.” Thus, Ramgen respectfully requests that the Court grant Ramgen’s Fee Determination Motion.

Also, Ramgen brings to the Court’s attention that *after* the December 1, 2014 deadline for Agilis to file an opposition to the Fee Determination Motion, Agilis filed Defendant, Agilis Engineering, Inc.’s Motion to Excuse Untimely Opposition and For Order Extending the Deadline to File a Brief in Opposition to Plaintiff’s Motion for Determination of Attorney’s Fees and Costs by One (1) Week [Dkt. No. 136] (the “Excuse/Extension Motion”). In its Excuse/Extension Motion, Agilis asks the Court to excuse the fact that Agilis has not filed an opposition to Ramgen’s Fee Determination Motion and missed its deadline to do so, and Agilis asks the Court to extend Agilis’s opposition deadline to December 9, 2014, after the Fee Determination Motion’s December 5, 2014 noting date. *See* Excuse/Extension Motion at 3:24-4:2. However, the Excuse/Extension Motion should be denied and stricken as moot.

Agilis bases its Excuse/Extension Motion on FED. R. CIV. P. 6(b)(1)(B), which provides: “When an act may or must be done within a specified time, the court may, for good cause, extend the time ... on motion made after the time has expired if the party failed to act

1 because of excusable neglect.”¹ Excuse/Extension Motion at 2:1-2. Agilis has not shown
 2 good cause to excuse its failure to file an opposition to the Fee Determination Motion and
 3 extend the deadline.

4 Agilis’s explanation for its failure to meet its opposition deadline is that Agilis’s
 5 counsel mistakenly calendared the deadline for December 3, 2014, instead of the actual
 6 deadline of December 1, 2014. *Id.* at 2:10-14. Yet, after missing its December 1 opposition
 7 deadline, Agilis did not file any opposition on the December 3 date that Agilis’s counsel
 8 mistakenly calendared as the deadline. Instead, on December 2, Agilis apparently reviewed
 9 the Fee Determination Motion, realized that it desired even more time to oppose the Fee
 10 Determination Motion, and filed its Excuse/Extension Motion asking the Court to extend the
 11 deadline to December 9. *See Id.* at 2:10-23; Supplemental Declaration of Michael A.
 12 Goldfarb in Support of Plaintiff’s Motion for Determination of Attorneys’ Fees and Costs at
 13 ¶ 2, Ex. A. Thus, Agilis’s explanation for missing its deadline and requesting an extension
 14 after the fact does not constitute good cause under FED. R. CIV. P. 6(b)(1)(B)’s “excusable
 15 neglect” standard. *See, e.g., Coble v. Suntrust Mortgage, Inc.*, No. C13-1878 JCC, 2014 WL
 16 4436926, at *2 (W.D. Wash. Sept. 9, 2014) (finding attorney’s error in interpreting the local
 17 rules was not good cause under Rule 6(b)(1)(B)); *see also McPherson v. Homeward*
 18 *Residential*, No. C12-5920 BHS, 2014 WL 442378, at *3-4 (W.D. Wash. Feb. 4, 2014)

19
 20 ¹ As an aside, Local Civil Rule 7(j) requires that (i) motions for relief from a deadline
 21 “should, whenever possible, be filed sufficiently in advance of the deadline to allow the court
 22 to rule on the motion prior to the deadline” and that (ii) “Parties should not assume that the
 23 motion will be granted and must comply with the existing deadline unless the court orders
 24 otherwise.” Agilis does not, and cannot, seek an extension under Rule 7(j) given that Agilis
 neither filed a motion for relief from its opposition deadline *before* that deadline, nor
 complied with that deadline. *See, e.g., McPherson v. Homeward Residential*, No. C12-5920
 BHS, 2014 WL 442378, at *3-4 (W.D. Wash. Feb. 4, 2014) (“Failure to comply with [Rule
 7(j)] is alone sufficient to deny the McPhersons’ motion for an extension of time to file their
 response.”).

(argument that time for filing summary judgment opposition under the Local Civil Rules was too short and that counsel needed more time to prepare opposition was not “excusable neglect” under Rule 6(b)(1)(B)); *Phillips v. Newspaper Holdings, Inc.*, No. C11-559 RSM, 2011 WL 4829410, at *3-4 (W.D. Wash. Oct. 12, 2011) (Rule 6(b)(1)(B)’s “excusable neglect” standard not met where party “simply wanted more time to complete his memoranda”).

Moreover, granting Agilis’s Excuse/Extension Motion would be prejudicial to Ramgen. As described in the Fee Determination Motion, there is a risk of Agilis’s non-payment of the judgment, as Agilis appears to have intentionally structured its corporate entities to impede collection efforts and thwart recovery. *See* Fee Determination Motion at 7:5-11. Granting Agilis’s Excuse/Extension Motion would delay entry of the amended judgment and further delay the expiration of FED. R. CIV. P. 62(a)’s 14-day automatic stay applicable to the amendment, postponing Ramgen’s ability to enforce the amended judgment.

Agilis’s Excuse/Extension Motion should therefore be denied, and any untimely opposition to the Fee Determination Motion that Agilis may file hereafter should be stricken.

In addition, Agilis’s Excuse/Extension Motion is now moot. The December 5 noting date for Ramgen’s Fee Determination Motion has arrived, and Agilis has not requested that the Court renote the Fee Determination Motion to a later date. Instead, Agilis asks the Court to excuse Agilis’s failure to timely file an opposition (as well as Agilis’s failure to even file an opposition before the Fee Determination Motion’s noting date), and to allow Agilis to file its opposition on December 9 after the noting date. Excuse/Extension Motion at 3-24-4:2. Agilis’s Excuse/Extension Motion should therefore be stricken as moot.

II. CONCLUSION

Accordingly, for the reasons stated in the Fee Determination Motion, as well as the fact that Agilis has not filed an opposition to the Fee Determination Motion, Ramgen respectfully requests that the Court grant the Fee Determination Motion and enter the Amended Judgment in a Civil Action submitted therewith.

RESPECTFULLY SUBMITTED this 5th day of December, 2014.

KELLEY, GOLDFARB, HUCK & ROTH, PLLC

s/ Michael A. Goldfarb

Michael A. Goldfarb, WSBA No. 13492

s/ Christopher M. Huck

Christopher M. Huck, WSBA No. 34104

s/ Kit W. Roth

Kit W. Roth, WSBA No. 33059

s/ R. Omar Riojas

R. Omar Riojas, WSBA No. 34500

700 Fifth Avenue, Suite 6100

Seattle, WA 98104

Telephone: (206) 452-0260

Facsimile: (206) 397-3062

E-mail: goldfarb@kdg-law.com

huck@kdg-law.com

roth@kdg-law.com

riojas@kelleygoldfarb.com

Attorneys for Plaintiff

Ramgen Power Systems, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system on December 5, 2014 and was served via the Court's CM/ECF system on all counsel of record.

/s/ Michael A. Goldfarb

Michael A. Goldfarb, WSBA No. 13492